

ESTTA Tracking number: **ESTTA291190**

Filing date: **06/22/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Spin Concepts, Inc.
Granted to Date of previous extension	06/24/2009
Address	12110 W. 129th Terrace Overland Park, KS 66213 UNITED STATES
Attorney information	Joan Optican Herman Hovey Williams LLP 10801 Mastin Blvd., Suite 1000 Overland Park, KS 66210 UNITED STATES tmdocketing.herman@hoveywilliams.com Phone:9136479050

Applicant Information

Application No	77456385	Publication date	02/24/2009
Opposition Filing Date	06/22/2009	Opposition Period Ends	06/24/2009
Applicants	Shishalovsky, Diana #109 15039 Dickens Street Sherman Oaks, CA 91403 UNITED STATES Shishalovsky, Karina #109 15039 Dickens Street Sherman Oaks, CA 91403 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. All goods and services in the class are opposed, namely: Restaurants and food preparation

Applicant Information

Application No	77409299	Publication date	03/03/2009
Opposition Filing Date	06/22/2009	Opposition Period Ends	
Applicants	Shishalovsky, Diana #109 15039 Dickens Street Sherman Oaks, CA 91403 UNITED STATES		

	Shishalovsky, Karina #109 15039 Dickens Street Sherman Oaks, CA 91403 UNITED STATES
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Goods/Services Affected by Opposition

Class 043. All goods and services in the class are opposed, namely: Restaurants and food preparation


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3302233	Application Date	05/24/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	SPIN!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 restaurant services and restaurant carry-out services		

U.S. Registration No.	3163808	Application Date	01/14/2005
Registration Date	10/24/2006	Foreign Priority Date	NONE
Word Mark	SPIN! NEAPOLITAN PIZZA		

Design Mark	 The logo features the word "SPIN!" in a bold, sans-serif font, stacked above a stylized black silhouette of a person on a bicycle. The person is leaning forward, and a pizza is shown spinning above their head. Below the silhouette, the words "neapolitan pizza" are written in a smaller, lowercase font.
Description of Mark	The mark consists of the word SPIN stacked above the stylized image of a man bending over while riding a bicycle and spinning a pizza over his head with the words NEAPOLITAN PIZZA below the image.
Goods/Services	Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Prepared foods for consumption on and off the premises, namely, pizza, panini and gelato Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Restaurant services and restaurant carry-out services

U.S. Registration No.	3172270	Application Date	01/14/2005
Registration Date	11/14/2006	Foreign Priority Date	NONE
Word Mark	SPIN! NEAPOLITAN PIZZA		
Design Mark	 The logo features a stylized black silhouette of a person on a bicycle, leaning forward. A pizza is shown spinning above the person's head. Below the silhouette, the word "SPIN!" is written in a large, bold, sans-serif font, and the words "neapolitan pizza" are written in a smaller, lowercase font below it.		
Description of Mark	The mark consists of The stylized image of a man bending over while riding a bicycle and spinning a pizza over his head with the words SPIN! and NEAPOLITAN PIZZA below the image.		
Goods/Services	Class 030. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Prepared foods for consumption on and off the premises, namely, pizza, panini and gelato Class 043. First use: First Use: 2005/05/01 First Use In Commerce: 2005/05/01 Restaurant services and restaurant carry-out services		

Attachments	78891702#TMSN.jpeg (1 page)(bytes) 78548071#TMSN.jpeg (1 page)(bytes) 78547987#TMSN.jpeg (1 page)(bytes) Consolidated Notice of Opposition.pdf (13 pages)(1264478 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JOH/
Name	Joan Optican Herman
Date	06/22/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Spin Concepts, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Diana Shishalovsky)	Ser. No. 77/456,385,
Karina Shishalovsky)	Ser. No. 77/409,299
)	
Applicant.)	

CONSOLIDATED NOTICE OF OPPOSITION

In the matter of Application Serial No. 77/456,385, filed April 23, 2008, in the names of Diana Shishalovsky and Karina Shishalovsky (hereinafter “Applicants”), published for opposition in the Trademark *Official Gazette* of February 24, 2009, for the mark A NEW SPIN ON TASTE (hereinafter the “first Opposed Application”), Spin Concepts, Inc. (hereinafter “Opposer”) believes that it would be damaged by registration of the mark shown in said application and hereby opposes the same.

Further, in the matter of Application Serial No. 77/409,299, filed February 28, 2008, in the names of Diana Shishalovsky and Karina Shishalovsky (hereinafter “Applicants”), published for opposition in the Trademark *Official Gazette* of March 3, 2009, for the mark FRESH CUTT HOME OF THE SPINNING GRILL and Design (hereinafter the “second Opposed Application”), Opposer believes that it would be damaged by registration of the mark shown in said application and hereby opposes the same.

In accordance with the provisions of T.B.M.P. 305, and 37 C.F.R. § 2.104(b), Opposer’s claims against each of the applications involve common questions of law and fact, as both applications include variations of the term “spin” which forms the basis of Opposer’s opposition,

as the identifications of services are identical in both applications, and as both applications are owned by the same party, and as such it is appropriate to combine its opposition to both of these applications in a single Notice of Opposition. (The first and second Opposed Applications are collectively referred to hereinafter as “Opposed Applications”.)

As grounds for opposition, it is alleged as follows:

1. Opposer, Spin Concepts, Inc., is a corporation organized under the laws of the State of Kansas, having a principal place of business at 12110 W. 129th Terrace, Overland Park, Kansas 66213.
2. Applicant, Diana Shishalovsky, is, on information and belief, an individual residing at #109 15039 Dickens Street, Sherman Oaks, California 91403. Applicant, Diana Shishalovsky, is, on information and belief, an individual residing at #109 15039 Dickens Street, Sherman Oaks, California 91403. Applicants have appointed Dmitry Mazisyuk, Law Offices of Dmitry Mazisyuk, 15250 Ventura Blvd Ste 1220, Sherman Oaks, California 91403-3200 as their representative upon whom notice or process in proceedings affecting the marks may be served.
3. Applicants seek to register the mark A NEW SPIN ON TASTE, and filed an application for registration of that mark for use on or in connection with the following services: Restaurants and food preparation, in International Class 43. This first Opposed Application was published in the *Official Gazette* on February 24, 2009.
4. The first Opposed Application was filed on April 23, 2008, on the basis of Section 1(b) (“intent to use”) of the Trademark Act. In that application, Applicants claim a bona fide intention to use the mark A NEW SPIN ON TASTE on or in connection with the services listed above.

5. Applicants also seek to register the mark FRESH CUTT HOME OF THE SPINNING GRILL and Design, and filed an application for registration of that mark for use on or in connection with the following services: Restaurants and food preparation, in International Class 43. This second Opposed Application was published in the *Official Gazette* on March 3, 2009.

6. The second Opposed Application was filed on February 28, 2008, on the basis of Section 1(b) (“intent to use”) of the Trademark Act. In that application, Applicants claim a bona fide intention to use the mark FRESH CUTT HOME OF THE SPINNING GRILL and Design on or in connection with the services listed above.

7. Opposer, on its own and/or through its predecessors in interest and/or related entities, is and has been engaged in the rendering of restaurant services and the sale of prepared food for consumption on and off the premises since long prior to April 23, 2008, and February 28, 2008, the respective filing dates of the Opposed Applications, and has built a successful business in that field.

8. Opposer, on its own and/or through its predecessors in interest and/or related entities, has used the mark SPIN! in interstate commerce in connection with restaurant services and prepared foods for consumption on and off the premises, such use commencing at least as early as May 1, 2005, and being continuous thereafter until the present. Materials showing Opposer’s use of its SPIN! mark are attached hereto as Exhibit 1, and incorporated by reference in this Notice of Opposition.

9. Opposer’s use of the SPIN! mark in connection with its restaurant services and prepared foods for consumption on and off the premises has been continuous, commercially significant, and substantially exclusive.

10. Opposer is the owner of three valid and subsisting United States Trademark Registrations directed to the SPIN! mark, as follows:

Mark	Reg. No.	Goods/Services
SPIN!	3,302,233	(Int'l Class: 30) Prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato; and (Int'l. Class: 43) Restaurant services and restaurant carry-out services.
SPIN! NEAPOLITAN PIZZA and Design	3,163,808	(Int'l Class: 30) Prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato; and (Int'l. Class: 43) Restaurant services and restaurant carry-out services.
SPIN! NEAPOLITAN PIZZA and Design	3,172,270	(Int'l Class: 30) Prepared foods for consumption on and off the premises, namely, pizza, panini, and gelato; and (Int'l. Class: 43) Restaurant services and restaurant carry-out services.

Current printouts of information about these registrations from the current electronic database records of the United States Patent and Trademark Office showing these marks are attached hereto as Exhibit 2, and are incorporated by reference in this Notice of Opposition.

11. Opposer has, since long prior to the filing date or claimed date of first use of either of the Opposed Applications, used the SPIN! mark in commerce which Congress may regulate in connection with its restaurant services and prepared foods for consumption on and off the premises, and has priority with respect to the same based upon its date of first use, as shown in Exhibit 2.

12. Opposer's Mark is inherently distinctive as applied to Opposer's goods and services, and its business, and has acquired extensive goodwill as related to restaurant services and

prepared foods for consumption on and off the premises, and as identifying high quality goods and services which have their origin with Opposer.

13. Applicants' A NEW SPIN ON TASTE mark is confusingly similar to Opposer's mark, as the marks are highly similar, and the services listed in the first Opposed Application are related to those goods and services sold by Opposer under its SPIN! mark.

14. Applicants' FRESH CUTT HOME OF THE SPINNING GRILL mark is confusingly similar to Opposer's mark, as the marks are highly similar, and the services listed in the second Opposed Application are related to those goods and services sold by Opposer under its SPIN! mark.

15. Applicants' services are such that they travel through the same and overlapping channels of trade as Opposer's goods and services and Opposer's business, and are provided to the same and overlapping classes of customers.

16. Applicants' mark A NEW SPIN ON TASTE, used in connection with the services listed in the first application being opposed, so resembles Opposer's SPIN! marks as used by Opposer and applied to Opposer's products and used in connection with Opposer's services, that it is likely to cause confusion in the minds of the public, and to cause mistake and/or deception as to the source of origin of Applicants' services that would lead the public and prospective purchasers to believe that Applicants' services are those of Opposer's, and/or are provided by, sponsored by, approved by, licensed by, affiliated with Opposer, or are in some other way legitimately connected to Opposer and/or its services, goods, and/or licensed products. Thus, Applicants' A NEW SPIN ON TASTE mark should not be registered, under Section 2(d) of the Trademark Act.

17. Applicants' mark FRESH CUTT HOME OF THE SPINNING GRILL, used in connection with the services listed in the second application being opposed, so resembles Opposer's SPIN! marks as used by Opposer and applied to Opposer's products and used in connection with Opposer's services, that it is likely to cause confusion in the minds of the public, and to cause mistake and/or deception as to the source of origin of Applicants' services that would lead the public and prospective purchasers to believe that Applicants' services are those of Opposer's, and/or are provided by, sponsored by, approved by, licensed by, affiliated with Opposer, or are in some other way legitimately connected to Opposer and/or its services, goods, and/or licensed products. Thus, Applicants' FRESH CUTT HOME OF THE SPINNING GRILL mark should not be registered, under Section 2(d) of the Trademark Act.

18. Any defect, objection to or fault found with Applicants' services sold under the A FRESH SPIN ON TASTE mark would necessarily reflect on and injure the reputation that Opposer has established for its products and business.

19. Any defect, objection to or fault found with Applicants' services sold under the FRESH CUTT HOME OF THE SPINNING GRILL mark would necessarily reflect on and injure the reputation that Opposer has established for its products and business.

20. If Applicants are granted a registration for the A FRESH SPIN ON TASTE mark for the services identified in the first Opposed Application, Applicants would obtain at least a *prima facie* exclusive right to use this mark. Such registration would be a source of damage and injury to the Opposer, and to the reputation and goodwill it enjoys in its SPIN! mark.

21. If Applicants are granted a registration for the FRESH CUTT HOME OF THE SPINNING GRILL mark for the services identified in the second Opposed Application, Applicants would obtain at least a *prima facie* exclusive right to use the mark. Such registration

would be a source of damage and injury to the Opposer, and to the reputation and goodwill it enjoys in its SPIN! mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicants' application to register the mark A FRESH SPIN ON TASTE, Application Serial No. 77/456,385, and Applicants' application to register the mark FRESH CUTT HOME OF THE SPINNING GRILL, Application Serial No. 77/409,299, both be denied as filed and published, and Applicants adjudged not entitled to registration of the mark A FRESH SPIN ON TASTE or of the mark A FRESH SPIN ON TASTE.

The \$600 filing fee for this Opposition has been charged to Deposit Account No. 19-0522 through the Trademark Trial and Appeal Board's ESTTA filing system. If any additional fees are due in connection with the filing of this Notice of Opposition, they may be charged to this account, and any overpayment may be credited to this account.

Respectfully Submitted

Spin Concepts, Inc.

By its Attorneys,

/s/JOH

Joan Optican Herman
HOVEY WILLIAMS LLP
10801 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
(913) 647-9050 - Phone
(913) 647-9057 - Fax
Attorneys for Opposer

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notice of Opposition, which was filed electronically with the Trademark Trial and Appeal Board, was served upon the Applicant and the Applicant's attorney of record, this 22nd day of June, 2009, at the following addresses:

Shishalovsky, Diana
#109, 15039 Dickens Street
Sherman Oaks, CA 91403

Shishalovsky, Karina
#109, 15039 Dickens Street
Sherman Oaks, CA 91403

Dmitry Mazisyuk
Law Offices of Dmitry Mazisyuk
15250 Ventura Blvd Ste 1220
Sherman Oaks, ca 91403-3200

/s/Joan Optican Herman

TAKE A SPIN! MENU SPIN CLUB! HAPPENINGS LOCATIONS/HOURS TALK TO US! JOBS HOME

**PIZZA AND
WINES**
OF THE WEEK

**SUMMER BIKE
RIDES AT SPIN!**
We ride, then
eat pizza!

FOLK
ON THE PATIO
EVERY TUESDAY

Eat Fluent Italian.

HAND-TOSSED, STONE-FIRED PIZZA,
SALADS, SANDWICHES, WINE & GELATO
IN THE NEAPOLITAN TRADITION



SPIN!
neapolitan pizza

FOLLOW US ON >> [twitter](#) | [facebook](#)

EXHIBIT

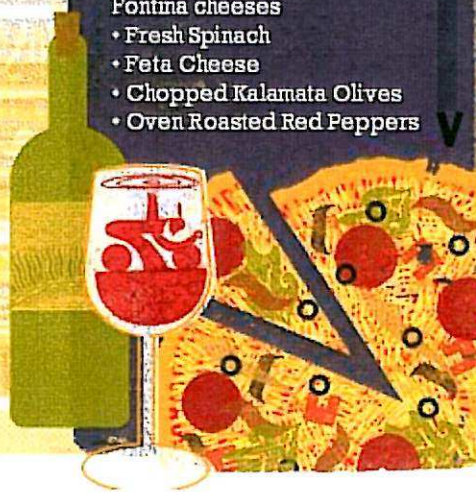
tabbles®

1

PIZZA & WINES OF THE WEEK

PIZZA: El Greco (Greek)

- Hand-tossed crust with crushed Roma tomatoes
- Mozzarella, Provolone, Fontina cheeses
- Fresh Spinach
- Feta Cheese
- Chopped Kalamata Olives
- Oven Roasted Red Peppers



FOLLOW US ON >> [twitter](#) | [facebook](#)

SPIN! COMMUNITY BIKE RIDES

10% OFF YOUR MEAL AFTER WE RIDE!

MONDAY NITES

- 6:30pm (Staging at 6:15)
- Starts Monday, May 4th
- Overland Park (12 Miles) 6541 W 119th St.

SATURDAY MORNINGS

- 10am (Staging at 9:45)
- Starts Saturday, June 6th
- Lee's Summit (20 Miles) 1808 NW Chipman Road

**JOIN US IN UPCOMING
SPIN! SPONSORED RIDES!**

**Tour de Lakes—Saturday, June 27
at 7 am**

- 10, 30 and 65 mile rides around Lee's Summit Lakes

FOLK ON THE PATIO
EVERY TUESDAY NITE

JUNE 23 -

Main Street: Rick Bacus

Overland Park: Larry Garrett

Lee's Summit: Jim Abel

Olathe: Jim Thomas

JUNE 30 -

Main Street: Tim Hazlett

Overland Park: Rick Malsick

Lee's Summit: Lezlie Revelle

Olathe: Jim Abel



SPIN!®

neapolitan pizza

Int. Cls.: 30 and 43

Prior U.S. Cls.: 46, 100 and 101

United States Patent and Trademark Office

Reg. No. 3,302,233

Registered Oct. 2, 2007

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

SPIN!

SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION
ON AND OFF THE PREMISES, NAMELY, PIZZA,
PANINI, AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT
CARRY-OUT SERVICES, IN CLASS 43 (U.S.
CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE,
SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,163,808 AND
3,172,270.

SER. NO. 78-891,702, FILED 5-24-2006.

NAKIA HENRY, EXAMINING ATTORNEY



Int. Cls.: 30 and 43

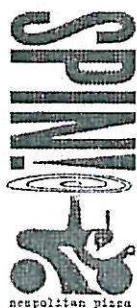
Prior U.S. Cls.: 46, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,163,808

Registered Oct. 24, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION
ON AND OFF THE PREMISES, NAMELY, PIZZA,
PANINI AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT
CARRY-OUT SERVICES, IN CLASS 43 (U.S.
CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE NEAPOLITAN PIZZA, APART
FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD SPIN
STACKED ABOVE THE STYLIZED IMAGE OF A
MAN BENDING OVER WHILE RIDING A BICYCLE
AND SPINNING A PIZZA OVER HIS HEAD WITH
THE WORDS NEAPOLITAN PIZZA BELOW THE
IMAGE.

SN 78-548,071, FILED 1-14-2005.

GRETta YAO, EXAMINING ATTORNEY

Int. Cls.: 30 and 43

Prior U.S. Cls.: 46, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,172,270

Registered Nov. 14, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



SPIN CONCEPTS, INC. (KANSAS CORPORATION)
12110 W. 129TH TERRACE
OVERLAND PARK, KS 66213

FOR: PREPARED FOODS FOR CONSUMPTION ON AND OFF THE PREMISES, NAMELY, PIZZA, PANINI AND GELATO, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

FOR: RESTAURANT SERVICES AND RESTAURANT CARRY-OUT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-1-2005; IN COMMERCE 5-1-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NEAPOLITAN PIZZA", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE STYLIZED IMAGE OF A MAN BENDING OVER WHILE RIDING A BICYCLE AND SPINNING A PIZZA OVER HIS HEAD WITH THE WORDS SPIN! AND NEAPOLITAN PIZZA BELOW THE IMAGE.

SN 78-547,987, FILED 1-14-2005.

GRETTA YAO, EXAMINING ATTORNEY